

July 21, 2008

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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Signature

JULY 21, 2008
Date of Signature

Re: Request to Withdraw and Reissue Office Action
Inventors: LENEAU, Harry, LENEAU, Judith, and ALLDAY, Steven
Serial No.: 10/576,841
Filing Date: April 20, 2006
Title: COLOSTRUM COMPOSITIONS AND METHODS
Group Art Unit: 1651
Examiner: WARE, Deborah K.
Conf. No.: 7450
Our File No.: P00902-US-01 (21934.0001)

REQUEST TO WITHDRAW AND REISSUE OFFICE ACTION

In view of the June 27, 2008 office action (the "Office Action") and the claims reviewed by the Examiner therein, Applicants submit the present request that the Examiner withdraw the Office Action and reissue a replacement office action containing a review of the claims as amended via Article 34 of the Patent Cooperation Treaty within International Application No. PCT/US2004/034770 (the "International Application") for which the above-referenced application (the "U.S. Application") was filed therefrom and claims priority thereto. ***THIS REQUEST TO WITHDRAW AND REISSUE THE OFFICE ACTION IS NOT INTENDED TO BE CONSIDERED A RESPONSE TO OFFICE ACTION UNDER 37 C.F.R. § 1.111(a).***

On July 10, 2008, the Examiner contacted the undersigned regarding an earlier conference between the same regarding the claims reviewed within the above-referenced U.S. Application. The undersigned originally contacted the Examiner stating that the claims reviewed by the Examiner and referenced within the Office Action were the claims as originally filed within the PCT Application and not the claims as amended under Article 34 of the Patent Cooperation Treaty during the international phase. During that initial conversation there was some question as to whether or not Applicants needed to "elect" that the claims as amended under Article 34 be considered during the national phase, and it was later determined by the undersigned that the "TRANSMITTAL LETTER TO THE UNITED STATES DESIGNATED/ELECTED OFFICE (DO/EO/US) CONCERNING A SUBMISSION UNDER 35 U.S.C. 371" (Form PTO-1390) accompanying the U.S. Application at the time of filing contains a specific reference to Article 19 claim amendments but not to Article 34 claim amendments, and as such, Applicants are not required to "elect" the examination of the claims as amended under Article 34.

During the July 10, 2008 conversation, the undersigned was advised by the Examiner not to respond to the Office Action and to await a "supplemental office action" to replace the Office Action.

Subsequently, and on July 15, 2008, Tamara Graysay of the Office of PCT Legal Administration contacted the undersigned to advise that a "supplemental office action" would *not* be issued unless Applicants made such a request in writing. During that conversation, the undersigned confirmed with Ms. Graysay that the Applicants would submit the present request to

withdraw the Office Action, further requesting that the Examiner review the claims as amended under Article 34 of the Patent Cooperation Treaty and to reissue a replacement office action. Ms. Graysay acknowledged the anticipated actions of the Applicants as referenced herein.

Applicants respectfully submit that as referenced within the opening paragraph of MPEP § 1893.01(a)(3), entitled "Article 34 Amendments (Filed with the International Preliminary Examining Authority),"

Amendments to the international application that were properly made under PCT Article 34 during the international preliminary examination phase (i.e., Chapter II) ***will be annexed by the International Preliminary Examining Authority*** to the international preliminary examination report (IPER) ***and communicated to the elected Offices***. See PCT Article 36, PCT Rule 70.16, and MPEP § 1893.03(e). ***If these annexes are in English, they will normally be entered into the U.S. national stage application by the Office absent a clear instruction by the applicant that the annexes are not to be entered.*** (emphasis added)

Applicants respectfully submit that in accordance with MPEP § 1893.01(a)(3), as referenced above in relevant part, Applicants' Article 34 claim amendments should have been automatically communicated by the International Preliminary Examining Authority to the U.S. Patent and Trademark Office ("USPTO," the "elected office" as referenced above) for review and consideration. In addition, Applicants respectfully submit that Applicants did not provide any clear instruction not to enter such Article 34 claim amendments for consideration by the USPTO.

Accordingly, and in summary, Applicants respectfully request that the Office Action be withdrawn, with a new office action to be issued by the USPTO containing comments relating to the claims of the Application as amended via Article 34 of the PCT. Applicants further submit

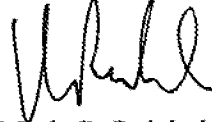
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that it should not be required to submit a formal response to Office Action to correct this matter, as a subsequent response from the USPTO may be a "final" office action, effectively removing one of Applicants' opportunities as a matter of right during prosecution of this Application.

Should the Examiner have any questions, please contact the undersigned.

Respectfully submitted,

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